REMARKS

In view of both the amendments presented above and the following discussion, the Applicant submits that none of the claims now pending in the application is obvious under the provisions of 35 USC § 103. Thus, the Applicant believes that all of these claims are now in allowable form.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, the Examiner should telephone Mr. Peter L. Michaelson, Esq. at (732) 542-7800 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Status of claims

Independent claims 14 and 23 have been canceled and replaced by corresponding new independent claims 26 and 29, respectively.

Dependent claims 16-19 and 24-25 have also been canceled, dependent claims 15 and 20-22 have each been amended, and new dependent claims 27, 28, 30 and 31 have been added.

Rejections under 35 USC § 103

A. Claims 14-18 and 20-25

The Examiner rejected claims 14-18 and 20-25 as being obvious over the teachings of the Gresh et al

application (International patent application WO 01/39506 published on May 31, 2001) taken in view of those in the Schuchman et al patent (United States patent 5,640,453 issued to L. Schuchman et al on June 17, 1997), the Zigmond et al patent (United States patent 6,330,719 issued to D. J. Zigmond et al on December 11, 2001) and the Stettner patent application (United States patent application 2002/0023130 published on February 21, 2002). Inasmuch as independent claims 14 and 23 have now been canceled, this rejection is moot. Nevertheless, since these claims have been replaced by new independent claims 26 and 29 which are counterpart method and apparatus claims, respectively, and from which all the other pending claims now depend, then, to expedite prosecution, this rejection will be primarily discussed with respect to new claim 26. In that context, this rejection is respectfully traversed.

In essence, the Examiner stated that the Gresh et al application disclosed various features of the invention as then recited in prior claim 14, but failed to disclose others. Specifically, the Examiner turned to each of the other applied references for what he believed to be the missing teachings:

(a) the Schuchman et al patent, on col. 1, line 35 and col. 2, lines 3-9, for teaching the concept of downloading computer software at a specified non-peak time;

(b) the Zigmond et al patent for teaching the concepts: as indicated in the abstract, of broadcasting programming while also periodically broadcasting triggers embedded within the broadcast, and in col. 6, line 66 through col. 7, line 12, of disconnecting from a network prior to viewer interaction

occurring and then reconnecting to the network for the interaction; and
(c) the Stettner application for teaching the concepts: in col. 5, line 59 through col. 6, line 12, of disconnecting a user but altering the user that (s)he can stay synchronized to a client program; as indicated in the abstract, of registering, through the client program, interactive input provided by the corresponding one viewer to each user device; in Fig. 3, element 314, of reconnecting each device to the network after the program has ceased; and (d) in col. 9, lines 30-50, of supplying, from each user device and through the client program, registered interactive input in the user device and from a corresponding viewer, to a predefined system on the network for subsequent processing.

With these teachings in mind, the Examiner surmises that it would have been obvious to one of ordinary skill in the art at the time the present invention was made for that person to modify the teachings in the Gresh et al application to include the particular teachings noted above in all of the other three applied references and thus arrive at the Applicant's invention as then recited in independent claim 14 (as well as prior independent claim 23).

As the Examiner will appreciate shortly, his view is incorrect with respect to new independent claim 26 (and parallel independent claim 29).

As discussed in the Applicant's prior amendment mailed May 1, 2008, the 39506 Gresh et al application is directed to a system that allows a large number of users to participate, on-line, in broadcast television programs.

As shown in FIGs. 1 and 2 and described in page 5, line 22 et seq of that application, the system involves centrally located multi-user server 111 which is connected, via the Internet, to Internet-enabled client device 109, such as a personal computer, used by each television viewer 108. The viewer also has a program receiver, e.g., a television, 107 which receives a broadcast program. Device 109 executes client application 412 (see Fig. 4) through which corresponding viewer 108 can interact with the broadcast program.

As noted in page 3, lines 14-16, the client application is either pre-installed on device 109 or downloaded to that device from the Internet. In operation, and as discussed in page 7, line 3 et seq, the client application receives scripts from server 111 which outline the flow of events in the broadcast program, such as presumably when viewers are queried, and the like, and executes on-line events as specified in the scripts. Furthermore, the client application receives timing information, in the form of synchronization cues, from server 111 throughout the broadcast program such that the client application can synchronize its scripts, particularly the viewer events, to the broadcast program and maintain that synchronism throughout the entire broadcast. To that end, the broadcast itself contains a time code, embedded within its vertical blanking interval (VBI). This code is detected by equipment interfaced to control application 112. Once each code is detected, control application 112 suitably passes the time information in that code to server 111 which, in turn, distributes the time information, as a

synchronization cue, to client application 412 executing at each client device 109. In order to obtain these cues, each instance of the client application maintains its own real-time socket connection, via the Internet, to server 111 throughout the entire broadcast. See page 9, lines 7-16. Moreover, during the broadcast and as discussed on page 4, lines 10-12, as the viewers interact with the program through their devices, the server obtains viewer response data (both data relating to the viewers themselves and/or their actions) provided by those devices, aggregates that data, stores resulting aggregated data in a database and then supplies the resulting aggregated data back to a broadcaster of the program.

Since each client application maintains a network connection to server 111 during the entire broadcast, such as to receive scripts and synchronization cues and provide viewer response data back to the server, then, if a substantial number of viewers simultaneously utilize this system, the ensuing communications between the server and all the client devices can congest the network and hence, due to its limited capacity, induce network latency. Such latency, if it is sufficiently large, can prevent timely receipt of some of the synchronization cues at some, if not all, of the client devices and, as a result, prevent proper synchronization from occurring at those devices. Further, as discussed on page 1, lines 28-32 of the present specification, the processing necessary to support such real-time communications load, particularly on an instantaneous basis, i.e. a so-called "peak load", over such a large number of viewers may exceed the capacity of multi-user server 111 and hence cause that server to itself

exhibit some degree of processing delay -- which may likely increase as the number of such viewers increases, or if the peak load is too high, simply cause that server to crash.

The Gresh et al application foresees a problem of a large number of simultaneous connected viewers occurring during the broadcast program and uses, as its solution described on page 4, lines 16-18, the concept of distributing an ensuing processing load across multiple servers.

While this approach may remedy the problem of "peak load", i.e., a large number of users simultaneously accessing the server during the broadcast, the present invention addresses a peak-load problem that is not recognized, let alone solved, in the Gresh et al application at all: how to handle a large number of viewers who might simultaneously download a client application prior to the actual broadcast of the program.

Moreover, congestion also occurs whenever a large number of user devices simultaneously send the user responses back to the server during or after the broadcast.

The Applicant's inventive approach relies on undertaking the download of the interactive client application and the upload of the user responses before or after, respectively, the time during which the interactive program is being broadcast and in a manner that avoids congestion which may well otherwise arise whenever a large number of user devices simultaneously download the application or upload their responses.

In particular, the inventive approach relies on a provider of the broadcast defining a time window prior to the broadcast during which each user can register and then download, from a server associated with, e.g., that provider, and via a networked connection, and install a first portion of an interactive client application, generally the largest portion which may range to, e.g., a few Mbytes in size, to his(her) user device. This window opens at a predefined time sufficiently far in advance of the actual broadcast of the interactive program, such as illustratively a week, which is wide enough to permit a large number of users to download that application portion to their associated devices, prior to the broadcast but without experiencing appreciable congestion. The window closes relatively close to the start of the broadcast, such as illustratively 3 hours prior to its start. During the 3-hour period, each user then establishes a network connection through his(her) user device to the server and downloads to that device a remaining (second) portion of the client application, including user questions for use during the interactive broadcast, synchronization and time slot information, and which overall is much smaller in size than the first portion. Given the rather small size of the second portion -- as compared to the first portion, relatively little congestion will arise even if a large number of users attempt to simultaneously download the second portion during the 3-hour time period prior to the actual broadcast. Once each user device receives the second portion, that device disconnects itself from the network and then, while it remains disconnected, executes the client application in synchronism to the interactive program as it

is then being broadcast. During the broadcast, the user device records interactive responses provided by its corresponding user to, e.g., the various questions presented to the user during the broadcast. After the broadcast and during a specific time slot, i.e. a predefined window in time occurring after the end of the broadcast, as defined by the time-slot information, the user device re-establishes a network connection with the server and uploads the user responses then stored in the device. See, e.g., page 2, line 26 through page 4, line 27 of the present specification (all references being to the substitute specification filed with the Applicant's prior amendment mailed May 1, 2008).

By using a pre-program window of a sufficient pre-defined size and a post-program time slot during which, respectively, a large portion of the client application is downloaded from the server to each user device and the user responses in that device are uploaded to that server, then the likelihood that "peak load" congestion might arise is significantly and advantageously reduced. Further, "peak load" congestion that might otherwise arise during the broadcast itself is advantageously and substantially, if not totally, eliminated by each of the user devices being disconnected from the network, particularly the server, during the interactive broadcast itself.

There are **no** teachings, disclosure or suggestions whatsoever, whether express or implied, in the Gresh et al application as to these inventive aspects of the invention.

Given this, what do the other applied references teach of relevance? The Applicant will now separately

discuss each of these references and distinguish its teachings.

The Schuchman et al patent discloses a universal interactive controller (also referred to as a "set-top box controller") for downloading and playback of information and entertainment services from one or more network distribution centers. Each center provides information and entertainment services selected from video and audio programs, video catalogs, data files, computer software and the like. The set-top box controller includes a controller and an interface between the network distribution centers, a data processor for processing the information in entertainment subject matter, via a data distribution circuit, to and from a storage device. A first plurality of interface connect circuits operated by the controller sends signals, via a network interface, to the network distribution center for ordering specific items of information and entertainment over the network. At the same time, these circuits also control the interface to the storage device in order to instruct the data distribution circuit as to whether the information and entertainment is to be viewed real-time and hence distributed directly to a television set, a digital interface to a computer, a audio channel or to a video channel, or whether it is to be stored for later use by the subscriber. The controller is controlled locally, through a further interface, for entering set-top control signals from a remote controller such as a hand-held controller, a keyboard or a numerical pad. Thus, the set-top box controller serves as a hub between the network distribution center and a variety of subscriber components, such as a television, a personal computer, a stereo player, or simply

a video display. In any case, the local storage device, such as a video cassette recorder or optical recorder, is interfaced to a subscriber's television set by the interactive set-top controller.

Thus, the Schuchman et al patent teaches the use of an intelligent interactive set-top box controller which provides non-real-time playback of video services (e.g., movies) and uses a generic or standard video cassette recorder as a storage device to record or download services during non-peak hours.

Given the rather disparate nature of the teachings between those in the Gresh et al application and those in the Schuchman et al patent, there is simply no reason why such an artisan faced with the "peak load" problem addressed by the present Applicant and the limited teachings in the Gresh et al application would then turn to the Schuchman et al patent for any relevant guidance. Of course, this is not surprising for the simple reason that the Gresh et al application simply fails to provide any teaching, suggestion or even just an inference which would motivate a skilled artisan to consider any of the teachings of the Schuchman et al patent to find a solution for the "peak load" problem addressed by the present Applicant, let alone any specific teachings relevant to solving that problem.

Moreover, the Examiner in support of his view of the relevance of the Schuchman et al patent references col.2, lines 3-9 thereof which state:

> "The invention also provides a way of providing information to entertainment services to a subscriber

> acting as a hub between various distribution networks, storage devices and subscriber components. In addition, services from the network distribution center may be accessed and processed in real-time or downloaded at a specified time (e.g., non-peak hours) and played back at subscriber convenience."

This passage merely discloses that content may be accessed in real-time or downloaded at a specified time and played back. Such simple downloading of content by a set-top box does not relate to any specific applications, needed for a specific future event, but is merely directed to the ultimate use, be it entertainment or otherwise, of that content by a subscriber.

Moreover, the Schuchman et al patent suggests that such content may either be enjoyed when it is downloaded or broadcasted (in real-time), or the content may be scheduled to be downloaded at another (non-peak hour) time after the broadcast, or in the future. This is evidenced by numerous passages in that patent which mention the option of playback of recorded content.

The very brief reference in Schuchman to a "peak-hour" clearly and only relates to pre-scheduling of content download in the future. This patent does not teach the Applicant's inventive concept of providing a time-window prior to a broadcast during which downloading of an interactive software application or a portion of it, which will be needed for a user to interact through his(her) a user device with the broadcast, may occur substantially non-simultaneously by a large number of users.

Hence, the Applicant's problem of avoiding congestion when downloading client applications to user devices in relation to a future scheduled broadcast event for which the client application is needed, is not only not recognized by the teachings in the Schuchman et al patent, it is clearly not solved, let alone in the inventive manner now taught by the present Applicant.

Thus, even if the teachings of the Schuchman et al patent were incorporated into those in the Gresh et al application, the drawbacks inherent in the approach taught by the latter, with respect to ameliorating "leak load" congestion, would remain unabated.

As to the Zigmond et al patent, it teaches an approach to improve requesting of information or placing orders via WEBTV by limiting congestion risk, scheduling requests under control of a web author and spreading those requests out over time. In doing so, a broadcaster may broadcast triggers to many receivers to prompt each such receiver to send requests to a single destination, such as a web server, on the Internet at roughly the same time.

The use of such broadcast triggers may, however, lead to various problems. Triggers broadcast along with television video are typically received by a great many receiver units at roughly the same time. Consequently, users located at many of those receivers may, in turn, attempt to access the same web page from a server and there through an order form at approximately the same time. The server may well become overloaded and present a bottleneck

situation with a result that many potential customers may not be able to access the order form and order a corresponding item while the web server remains overloaded, thus leading to lost sales for an associated vendor. To remedy this, rather than immediately attempting to send a request, an interactive television receiver unit browser waits a period of time (for example, a random period) before sending the request to the server. By delaying the transmission of requests, remote access demands for the server can be effectively smoothed out over time.

In one embodiment taught by the Zigmond et al patent, a trigger is received on an interactive television receiver unit which then causes the receiver to display an associated icon on the television. If the viewer selects the icon, then a browser in the receiver retrieves a web page, via the Internet, identified by a Uniform Resource Locator (URL) in the trigger. The web page includes an indication of a destination, scheduling information and a form area. Once the page is displayed, the viewer enters user information into the form area. The browser captures that user information, incorporates it into a request and then stores the request in a queue along with the scheduling information. The browser periodically checks the scheduling information in the queue and determines from the scheduling information whether a proper time has arrived to send the request. When that time finally occurs, the browser retrieves the request and transmits it onward to its destination. Because the scheduling information and destination are under the control of the web page author, that author can vary scheduling information from access to access so that requests from receiver units to the server

are spaced out in time, thereby reducing or eliminating problems associated with simultaneously sending large numbers of requests to the same destination.

In addition to eliminating throughput bottlenecks by spreading accesses of a destination out over time, the Zigmond et al patent also teaches that access to a destination can be moved to a desired time slot. In some situations, economies arise in sending responses to a destination at certain times than at others. Sending responses to the destination during times typically associated with low network usage, such as during the night, is often less expensive than sending the same responses during times of relatively high network usage, such as the middle of the workday. A receiver unit, of the type disclosed by the Zigmond et al patent, operating in that fashion can take advantage of the lower cost associated with low usage times by deferring its transmission of user requests until those times.

The Examiner specifically relates the teachings in the Zigmond et al patent to a step in the Applicant's prior claim 14, wherein the inventive device is disconnected from the network prior to the user interacting with the broadcast program through the device. In that regard, the Examiner references col. 6, line 66 - col. 7 line 12 of that patent, which state:

> "If the status code indicates request 310 (the second communication) was properly received (for example, '200 OK' status code), then script 306 calls a 'response' method on deferred object 302 to retrieve response content (step 416) and browser 301 displays

> the response content to the viewer. In embodiments where the viewer can use the email 'out-box' to view queued deferred requests as described above, the viewer can be disconnected from the network for a period of time, reconnect, and then view the 'response' content using the interface of browser 301 (for example, the email 'in-box'). Such 'response' content may include order confirmation numbers received from merchants in response to their having received orders for items in the form of deferred requests from the receiver unit."

This passage teaches the notion of periodically checking (after being disconnected and reconnected) for a response from merchants. Clearly, disconnection of a user device in the context of this passage bears no relation whatsoever with disconnecting a device from a network prior to a user interacting with a broadcast program, as taught by the Applicant's present invention.

Embedding triggers in a broadcast, as taught by the Zigmond et al patent, teaches away from the Applicant's present invention.

In particular, the triggers used in the Applicant's invention are distributed well in advance of an interactive broadcast program to which they relate and certainly not during the interactive program while it is actually being broadcast. Moreover, these triggers, when they occur, relate to a future program, not one, as taught by the Zigmond et al patent, that is simultaneously occurring, i.e., then being broadcast. Further, the triggers used in the Applicant's present invention are

intended to attract potential participants to register for subsequent participation in an upcoming program to be broadcast. It is not a request to register a potential participant for a program that follows such trigger, which the Applicant's present invention addresses, but rather how to avoid simultaneous downloading of a client application (or a portion of it) by a large number of potential participants.

By contrast, the Zigmond et al patent is primarily concerned with a number of simultaneous requests provided by its users following the provisioning of the triggers, but not the downloading itself of an interactive client application to the user devices employed by those users. Consequently, if the teachings in the Zigmond et al patent where hypothetically applied, as the Examiner appears to be proposing, in the context of a future interactive broadcast program as described in the Applicant's present specification, then doing so would potentially only result in scheduling the request for registration, to the future program, of a potential participant following the trigger which itself has been provided to attract the attention of that participant. This result falls well short of the Applicant's present invention and in fact significantly differs from that result for the simple reason that the present invention is unconcerned with simultaneously occurring registration requests.

Lastly, the Stettner application. That particular application is directed at improving management of participant input for interactive television and radio shows. It states, in paragraph [0010]:

"... a system and method to manage participant input for an interactive show. In accordance with an embodiment of the invention, participant input for an interactive show, such as input submitted by the show's viewers or listeners, is stored in a server. The participant input stored in the server is processed to sort, identify, classify, or select submissions that may be appropriate to address during the interactive show or during other times, or to otherwise determine a relationship of the participant input relative to the show. While the participant input is being processed, the participant who sent the participant input need not be kept on hold or otherwise have to keep the line of communication open. Instead, the communication between the participant and the interactive show can be terminated. An alert can be subsequently sent to the participant if or when the participant's submission is to be addressed in the interactive show. An aspect of the invention provides a method to receive participant input for a show and to subsequently disconnect a communication with a participant that submitted the participant input. The participant input is held in a storage location. The method further includes automatically processing the stored participant input to determine a relationship of the participant input to the show. Based on the determined relationship, the method alerts the participant that submitted the participant input if the participant input is selected for the show ..." .

Given this, the Stettner application basically teaches that, during an interactive show, a participant may connect to a network server to send input to it and can then disconnect there from. The participant may then be informed later by the server if that input was used in the show. This teaching bears little relation, if any, to the Applicant's inventive concept where a participant may interact with the show completely in an off-line mode through an interactive client application executing in synchronism with the broadcast, with resulting user input being temporarily stored in the participant's user device and then later, after the broadcast has ended, transmitted to a server associated with the broadcast provider during a pre-defined time slot which has been previously specified to that device.

The alerting functionality in the Stettner application to which the Examiner refers is merely intended to signal to the participant when his interactive input (after he has submitted it to the system) was selected for use in the program.

This functionality vastly differs from the Applicant's inventive concept of executing, in a user device, an off-line interactive client application synchronized with a simultaneously occurring interactive broadcast program. In contrast, the Stettner application teaches that the participant's response is submitted during the broadcast, and once so submitted, the broadcast can then be switched off until an alert occurs. The alert occurs only after the participant's response has been transmitted. This alert is simply not intended nor does it function to

let a participant interact, through a client application, with the program in a manner synchronized to the program while the user device is disconnected from a server for the simple reason that, as taught by the Stettner application, no interaction exists through a client application after the user device is disconnected -- which lies directly contrary to the Applicant's inventive teachings.

In fact, the Stettner application fails to teach any synchronization mechanism at all. Interacting with a broadcast program through a client application running in synchronism with that program is a totally different concept then merely sending a message, as taught by the Stettner application, that a participant's input will be used in such a program.

As discussed, the alert taught by the Stettner application occurs only after the participant's response has been submitted. In contrast, in the Applicant's present invention, interaction between the user and the broadcast program occurs before the participant's response is transmitted. As such, the alert taught by the Stettner application, which is constrained to occur only after the participant response has occurred, simply cannot be used to influence anything that would occur before it, namely the interaction of the user with his(her) user device, and thus has no bearing on that interaction.

Finally, the Stettner application fails to teach that all participant responses, which result from the interaction of the participants with the broadcast interactive program, are first stored within associated

participant devices during the program and before those responses are submitted to a server sometime later, but instead are directly submitted, as they interactively occur, and stored at a mediation server in the network -- again the latter being contrary to the Applicant's present inventive teachings.

Now, having described the salient teachings of each of the three additional references, it should be quite clear that the hypothetical combination of those teachings with the teachings in the Gresh et al application will stop far short of and likely teach away from the Applicant's present invention.

The Applicant has drafted new independent claim 26 to more precisely recite, than did prior claim 14, the above-described distinguishing features of the present invention. This new independent claim recites as follows, with its principal distinguishing recitations shown in a bolded typeface:

> "A method for implementing a broadcast television program with interactive participation of a plurality of participants, each of the participants viewing and interacting with the broadcast television program through an interactive client application executing on a corresponding one of a plurality of participant devices, all of the participant devices being capable of connecting, via a communications network, to a system that directs an interactive part of a broadcast show, the method comprising the steps of:

registering at a given time in advance of the broadcast of the television program, via the network and through the system, each participant as a potential participant interested in interacting with the broadcast television program;

after said registering step, downloading, from the system and through connections established over the network, a first part of the interactive client application, during a time window dictated by the system, to all of the participant devices, the time window starting after the given time but expiring at a predefined time prior to broadcast of the television program, the time window having a given width sufficient to minimize simultaneous downloading of the client application by a plurality of the participant devices;

starting and running the client application on each one of the participant devices parallel to and synchronized with the television program as the program is being broadcast but while said each one of the participant devices is not connected, via the network, to the system;

during the broadcast of the television program, registering input from each one of the participants on each corresponding one of the participant devices so as to define participant input; and

during a corresponding one of a plurality of time-slots, re-establishing a network connection, by each one of the participant devices, to the system and submitting the participant input to the system, via the

> **network, from said each one of the participant devices, the corresponding one time-slot being previously specified to said each one participant device and occurring during or after the broadcast of the television program.**" --. [emphasis added]

Parallel and highly similar limitations exist in counterpart apparatus claim 29.

Thus, the Applicant submits that neither of independent claims 26 nor 29 is rendered obvious under the provisions of 35 USC § 103 by the teachings in the four applied references regardless of whether those teachings are taken singly or in any combination, including that put forth by the Examiner.

Each of the remaining claims, specifically claims 15, 20-22, 27-28 and 30-31 depends, either directly or indirectly, from one of these two independent claims and recites further distinguishing features of the present invention over those recited in that independent claim. Consequently, the Applicant submits that each of these dependent claims is also not rendered obvious under the provisions of 35 USC § 103 over the teachings in these four applied references for the same reasons set forth above with respect to claim 26.

Hence, this rejection should now be withdrawn.

B. Claim 19

The Examiner has rejected dependent claim 19 as being obvious over the teachings of the Gresh et al application taken in view of those in the Schuchman et al and the Zigmond et al patents, and the Stettner application (the "four previously applied references") and further in view of the teachings in the Boland et al patent (United States patent 4,484,218 issued to P. Boland et al on November 20, 1984).

Claim 19, which previously directly depended from independent claim 14, has now been canceled. Further, claim 14 has been replaced by new independent claim 26. While new claim 28 itself contains limitations similar to those in prior claim 19, however, this dependent claim does not directly depend from independent claim 26 -- as claim 19 had from claim 14. Rather new claim 28 depends through new dependent claim 27 and thus includes the limitations of that intervening claim.

Given this new claim structure over what correspondingly had existed, the Applicant submits that this rejection is simply moot with no further comments being necessary.

Consequently, this rejection should now be withdrawn as well.

Conclusion

Accordingly, the Applicant believes that all the claims are presently in condition for allowance. Both reconsideration of this application and its swift passage to issue are now earnestly solicited.

Respectfully submitted,

February 20, 2009

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